

Watch out! Campaign in process

Vol. 5, No. 136, July 26, 1999

On July 22, 1999, the Vyshgorod district court in the vicinity of Kyiv judged the decision of the Kyiv city election commission on the election of head of the Kyiv state administration and winner of 76 percent of the vote Oleksandr Omelchenko as the new mayor of Kyiv, to be illegitimate and void.

The court verified the complaints made by Oleksandr Omelchenko's former competitors for the mayor's seat, Hryhory Surkis and Mykola Hrabar, and agreed that the candidates had been denied equal opportunity to run their campaigns, and that Oleksandr Omelchenko abused his official power and did not fully comply with the law when funding his campaign. The court also ruled that the very creation of the Kyiv city election commission was illegitimate, as it had been formed before the law on the special status of Kyiv as the capital of Ukraine came into force. Remarkably, nobody seemed to notice the problem with the commission before, as if the argument was saved specially for the court.

Oleksandr Omelchenko's representatives responded by demanding on the Kyiv regional office of public prosecution and the Supreme Court to protest again the judgement of the district court that had announced the decision of the Kyiv election commission to be invalid. According to the law on election of local deputies and mayors, court judgements on cases connected to the elections are final and can only be challenged by the regional office of public prosecution or the Supreme Court.

The court's judgement demanded on the Kyiv city election commission (KCEC) to set the date of the new election. The dilemma is that the new mayoral election may be called only by the Kyiv election commission, which will be reluctant to do so as it formally announced that it believed the mayor had been elected legitimately. According to deputy chairman of the Kyiv city state administration Volodymyr Yalovyi, the Central Election Commission confirmed the legitimacy and authority of the Kyiv city election commission, and the commission, in its turn, endorsed the election of Oleksandr Omelchenko as the legitimate mayor of Kyiv.

Melting in the unusual summer heat in the city or enjoying their vacations elsewhere, Kyivites reacted rather passively to the news. Political forces across the spectrum, on the contrary, sought to use the conflict to advance their own ends - and skilfully added to the frustration of ordinary voters with the election process.

According to President Leonid Kuchma's press secretary and deputy chief of staff Oleksandr Martynenko, the President said the court's judgement "shattered the will of thousands of Kyiv voters" and argued that the judgement had confirmed the President's earlier view on performance of many courts that tended to misinterpret their independence. He routinely commented on the judgement as yet another case among recently made decisions in favor of a particular force. He went on to remind about the judgement of the Supreme Court of Ukraine that had pressured the Central Election Commission (CEC) on its decision concerning "one of the presidential candidates". In that case, the candidate was Oleksandr Moroz, viewed as one of Mr. Kuchma's most serious challengers, and refused by the CEC some additional signature sheets needed to collect 1 million of potential voter signatures. "Under the circumstances, the chairman of the Supreme Court should have drawn conclusions concerning the degree of bias of the judiciary system", said the President.

The purpose of this piece is not to assess the level of pressure on the court that may or may not have been exerted by Mr. Omelchenko's less successful opponents but rather to focus the lack of understanding that democratic practices cannot be introduced by non-democratic methods. Having that burden of proof of serious deviations from the law in the process of the election, any court would find it hard to justify any judgement other than recognizing the election results to be invalid. Yet a number of democracy-minded politicians like leader of the Party of Reforms and Order Victor Pynzenyk condemned the court's judgement as the evidence of deterioration of formally independent democratic institutes into elements of providing services to the dictatorial regime and "clans". Outsiders of the current political environment ranged in proposed solutions from calls to hold an extraordinary session of the parliament to "save self-governance in the capital of Ukraine" (Rukh) to the attempted funeral of a dummy representing the Goddess of Justice in front of the Vyshgorod district court (Ukrainian youth association) and promises to use the "Odessa experience" of protecting the mayor and his staff from dislodging from their premises (UNA-UNSO).

Meanwhile, the major damage is done to the mere idea of elections in the eyes of ordinary voters who had to experience unprecedented aggressive campaign, then were told that the election had been accompanied by major

violations, then saw their "illegitimate" mayor still appointed to run the city, and finally left at a loss as to when (or if) the new election will take place and if the results of new elections (both local and presidential ones) will not be scrapped.

Violations of the election law occurred from both sides. However, while Hryhory Surkis spent his businesses' money for his campaign, his opponent Oleksandr Omelchenko used public resources he was not supposed to use.

Supporters of Oleksandr Omelchenko claim that election results that gave 76 percent of the vote to the winner can only be abolished in a "banana republic", not a democracy. However, they tend to ignore the fact the judgement followed the evidence of serious violations committed by Mr. Omelchenko's campaign team. In no democracy a politician judged by the court to have abused his power and used public funds and resources for his own campaign purposes could hope to have a political career anymore. In no democracy can a politician build his or her campaign on manipulating the pocket media and engaging in anti-Semitism.

The court's judgment was based on the following evidence. The current election law does not allow executive authorities, local self-governance bodies and their civil servants, as well as members of election commissions to take part in election campaigns on the side of one of the candidates. Meanwhile, the court found that on May 5, 1999, the conference of city chairmen in Lviv adopted a resolution of the Association of Ukrainian Cities, signed by 23 mayors of major Ukrainian cities and disseminated in Kyiv in support of Oleksandr Omelchenko. Later on, a Kyiv-based firm, Ikarus-Service, instructed its affiliated firm in Lithuania to print Omelchenko campaign leaflets on behalf of members of the Kyiv council. Two days before the polling day, a city newspaper, Shuliavka, published an article by chairman of the Zhovtnevy borough administration of Kyiv, "Choose Professionalism", in support of Mr. Omelchenko's candidacy. Other officials who overtly advertised their support for Mr. Omelchenko during the election campaign included Deputy Defence Minister Gen. Yezhel, chairman of the Sevastopol city council Volodymyr Parkhomenko, head of the Sevastopol city state administration Leonid Zhunko. One of Mr. Omelchenko's official representatives and campaign activists at the election was Oleksandr Kuzmenko, director of the Social Service for the Youth of the Kyiv city state administration.

Other deviations from the current election law included Mr. Omelchenko's orders to withdraw his main rival Hryhory Surkis's election posters and commands to the city police to prevent attempts of unsanctioned posterings and dissemination of campaign leaflets, detain and fine offenders.

Under the law, the media that are founded or co-founded by local executive authorities or local self-governance bodies, or funded fully or partially from the national or local budget must observe the equal access principle and provide equal opportunity for all candidates to present their agendas. However, the Khreshchatyk newspaper, 100 percent funded by the Kyiv city council, published only campaign materials in favor of Oleksandr Omelchenko. Similarly, the Stolytsya newspaper, 25 percent of the stock of which is owned by the Kyiv state administration, published Mr. Omelchenko's self-advertising article. Even local publications like Kyiv state administration's real estate advertising bulletin, disseminated free of charge to most of local households, published Mr. Omelchenko's campaign statements and increased the number of copies from regular 500,000 to 1,421,000. Another newspaper, Osvita, dedicated to the 500th anniversary of the Magdeburg Right in Kyiv and paid for partially by the Kyiv city council, published Mr. Omelchenko's campaign materials on several pages and was printed in a remarkable number of 500,000 copies, though the previous and the following issues were run only in 8,770 copies. Several national and regional publications, including the Ukraina Moloda, the Nezavisimost, the Kievskie Novosti, received substantial local budget funds from the Kyiv city state administration. Shortly afterwards they published remarkably favorable articles about Oleksandr Omelchenko and his interviews, reproduced in three to five times as many copies as usual. The Kyiv television and radio company, partly owned by the city state administration, also ignored the equal access principle. Using the city underground announcement system for advertising the head of the city state administration as the best mayoral candidate is also out of tune with democratic self-governance principles.

By far, the worst impression on the voters was produced by a series of insulting, compromising articles about candidates Surkis and Babych in the Vechirniy Kyiv and the Khreshchatyk, paid for from the city budget (270,000 UAH and 328,640 UAH were transferred by the Kyiv city state administration to the newspapers' respective accounts), and the Silski Visti.

Like in most of other things, timing was crucial. Although the law gives three days for questioning election results, it took the court over six weeks to make up its mind. This fact, in its turn, may serve as the reason for annulling the judgement. The timing is good from another point of view: most of members of the parliament and political activists are outside Kyiv and unwilling to interrupt their vacations, and so are voters who can hardly be mobilized for action now.

The real winner of the situation is, no doubt, President Kuchma. Not only he found what may be regarded as an illustration to his earlier claims that many courts in Ukraine are biased, but made his accusations on behalf of "thousands of Kyiv voters" whose will "had been abused" by the judgement. As Leonid Kuchma's own bid for re-

election was explicitly supported by the Social Democratic party, chaired by Hryhory Surkis's friend and business partner, Vice Speaker of the Ukrainian parliament Victor Medvedchuk, it was broadly assumed that Mr. Surkis's failure might be interpreted as the weakness of the campaign team that would try to extend Mr. Kuchma's stay in the office. When it became clear that Oleksandr Omelchenko was likely to win by a broad margin, the President congratulated him on his victory and presented with a huge bunch of flowers even before the official results were announced. Later on, after Hryhory Surkis challenged Oleksandr Omelchenko's victory at the court, the President publicly warned the two from "settling scores". Having announced that the Vyshgorod district court abused the volition of voters, Leonid Kuchma, possibly, gained support of many of over 700,000 of Kyivites who had voted for Omelchenko on May 30.

Therefore, Kyiv, again has no legitimate mayor, and Oleksandr Omelchenko remains - at least unless the Kyiv regional office of public prosecution and the Supreme Court of Ukraine overrun the judgment of the district court - the head of the Kyiv city state administration, appointed by President Kuchma, and, hence, totally accountable and subordinate to him. The outcome is particularly suitable for the President in the context of growing understanding between Mr. Omelchenko and one of Mr. Kuchma's strongest rivals in the forthcoming presidential race, Speaker Oleksandr Tkachenko.

The conflict is likely to last and add to the mess in the distribution of political forces and financial currents in the period before the presidential election. In fact, holding the Kyiv mayoral election simultaneously with the presidential election scheduled to take place on October 31, 1999 would have at least two positive effects: (1) the turnout will be higher, thus, giving more "moral legitimacy" to the elected mayor; (2) no Kyiv official will be able to influence the election procedure and vote count in the capital; (3) the simultaneous elections will allow to save substantial budget funds.

Claims that the conflict demonstrated possible developments that may follow the victory of an "unsuitable" candidate at the presidential election may be true only if neither of the candidates' campaign is 100 percent clean, transparent and legitimate. Seeing the mayoral election in Kyiv as a "dressed rehearsal" of the forthcoming presidential election appears to be rather simplistic. While the President and most of his rivals agree that the outcome of elections is determined by Kyiv voters, no more than 5 percent of the country's total votes may hardly be a panacea for a candidate who loses in the politically active eastern regions. Yet the lesson to be learned by all presidential candidates from the conflict is as follows: any violations of the election law may be used to challenge the legitimacy of a newly-elected head of the state, including violations, deliberate or not, committed by his or her opponents.